

REMARKS

I. STATUS OF THE CLAIMS

Claims 17, 19 and 20 are canceled herein.

Therefore, it is respectfully submitted that claims 1-16, 18 and 21-25 are currently pending.

II. REJECTION OF CLAIMS 14-16, 18, 21, 22, 24 AND 25 UNDER 35 USC 102 AS BEING ANTICIPATED BY SCHWARTZMAN (US PATENT 6,385,773)

In the present invention as recited, for example, in claim 15 as amended herein, a channel plan has predefined characteristics for each signal channel provided by a node of a network.

As recited, for example, in claim 15, communication of a plurality of signals communicated on the node is tested by conducting a test plan. As recited, for example, in claim 15, the test plan prescribes an automated test which compares actual measured values on each signal channel provided by the node with expected values indicated by the predefined characteristics of the channel plan, and thereby produces a test result.

As recited, for example, in claim 15, the test result is compared with a user definable alarm limit. As recited, for example, in claim 15, a failure time spectrum scan is performed on the node when the test result exceeds the alarm limit. As recited, for example, in claim 15, the failure time spectrum scan is representative of power amplitude versus frequency over the frequency spectrum of the node. As recited, for example, in claim 15, the power amplitude versus frequency over the frequency spectrum of the node is then displayed.

Please note that claim 15 is amended to recite the above-described features. Support for the amendments is found, for example, on page 16, lines 19-29; page 17, lines 20-23; page 19, lines 11-19; and page 33, lines 20-30, of the specification.

Therefore, the present invention as recited, for example, in claim 15, relates to the relationship of a channel plan and a test plan. The test plan prescribes an automated test which compares actual measured values on each signal channel provided by the node with expected values indicated by the predefined characteristics of the channel plan.

Schwartzman discloses a spectrum analyzer for monitoring a node. See, for example, spectrum analyzer 204 and node 108 in FIG. 2A of Schwartzman.

FIG. 3 and the disclosure in column 10, line 15, through column 11, line 6, of

Schwartzman, describes the use of spectrum analyzer 204 of Schwartzman. As indicated in these portions of Schwartzman, spectrum analyzer 204 is used to determine if a respective channel has too much noise. If there is too much noise, the system switches to a different channel.

For example, in operations 306 to 312 in FIG. 3 of Schwartzman, a detected bit error rate (BER) is compared against a threshold BER. If the detected BER is higher than the threshold BER, the noise level on the channel is too high. In this event, the spectrum analyzer 204 initiates a search for a cleaner channel, and a switch to the cleaner channel occurs. See, for example, column 10, lines 53-65, of Schwartzman.

Therefore, Schwartzman simply compares a detected BER to a threshold BER, and causes a switch to a cleaner channel when the detected BER is greater than the threshold BER.

No portion of Schwartzman discloses or suggests a channel plan. Moreover, no portion of Schwartzman disclose or suggests that a test plan prescribes an automated test which compares actual measured values on each signal channel provided by a node with expected values indicated by the predefined characteristics of the channel plan.

Further, no portion of Schwartzman discloses or suggest that a failure time spectrum scan representative of power amplitude versus frequency over the frequency spectrum of the node is performed, and that the power amplitude versus frequency over the spectrum frequency of the node is displayed. Instead, as indicated above, Schwartzman simply switches channels when the BER is higher than a threshold level.

The Examiner cites FIG. 4A of Chen as disclosing a plot of power amplitude versus frequency. However, the plot of Chen is not produced in response to a failure time spectrum scan. Instead, the plot in Chen is simply provided to illustrate the selection of the optimum frequency in Chen. See, for example, column 11, lines 6-10, of Chen.

It is respectfully submitted that no portion of Chen or Schwartzman discloses or suggests that a failure time spectrum scan representative of power amplitude versus frequency over the frequency spectrum of a node is performed, and that the power amplitude versus frequency over the spectrum frequency of the node is displayed as recited, for example, in claim 15.

The above comments are specifically directed to claim 15. However, it is respectfully submitted that the comments would be useful in understanding various differences of various other rejected claims over Schwartzman and Chen.

Claim 6 specifically recites that the test is a test of total node power, carrier-to-noise power, percent availability, average noise power, channel power or burst counter. It is

Serial No.: 09/449,643

respectfully submitted that none of the references discloses or suggests any of these specific tests in combination with the other features of the claims.

In view of the above, it is respectfully submitted that the rejection is overcome.

III. REJECTION OF CLAIMS 1-4, 6 AND 11-13 UNDER 35 USC 103 AS BEING UNPATENTABLE OVER SCHWARTZMAN IN VIEW OF CHEN (US PATENT 6,570,913)

The above comments for distinguishing over Schwartzman and Chen also apply here, where appropriate.

In view of the above, it is respectfully submitted that the rejection is overcome.

IV. REJECTION OF CLAIMS 5, 7, 8-10, 17, 19, 20 AND 23 UNDER 35 USC 103 AS BEING UNPATENTABLE OVER SCHWARTZMAN IN VIEW OF CHEN AND SPRENGER (US PATENT 5,861,882)

The above comments for distinguishing over Schwartzman and Chen also apply here, where appropriate.

In view of the above, it is respectfully submitted that the rejection is overcome.

V. REJECTION OF CLAIMS 1, 14 AND 15 UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING IN VIEW OF US PATENT 6,522,987

A terminal disclaimer was filed on October 20, 2004, in view of US Patent 6,522,987. The terminal disclaimer was signed by the undersigned attorney, Attorney Kravetz.

On page 8 of the outstanding Office Action, the Examiner asserts that Attorney Kravetz is not an attorney of record, and is therefore not authorized to sign the terminal disclaimer. Accordingly, the Examiner indicates that the terminal disclaimer was disapproved by the USPTO.

However, it is respectfully submitted that 37 CFR 1.34 specifically indicates that the signature of an attorney on a paper in a patent case constitutes a representation to the USPTO that the attorney is authorized to represent the applicant.

Therefore, it is respectfully submitted that the attorney signature on the terminal disclaimer is appropriate, and that the terminal disclaimer should be accepted by the USPTO.

If the USPTO continues to disapprove of the terminal disclaimer, it is respectfully requested that the Examiner point out a section of 35 USC, 37 CFR or the MPEP specifically indicating that the signature of an attorney on the terminal disclaimer is not sufficient to be

Serial No.: 09/449,643

accepted by the USPTO.

In view of the above, it is respectfully submitted that the rejection is overcome.

VI. REJECTION OF CLAIMS 1, 14 AND 15 UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING IN VIEW OF US PATENT 6,741,947 IN VIEW OF CHEN

A terminal disclaimer was filed on October 20, 2004, in view of US Patent 6,741,947. The terminal disclaimer was signed by the undersigned attorney, Attorney Kravetz.

On page 8 of the outstanding Office Action, the Examiner asserts that Attorney Kravetz is not an attorney of record, and is therefore not authorized to sign the terminal disclaimer.

However, it is respectfully submitted that 37 CFR 1.34 specifically indicates that the signature of an attorney on a paper in a patent case constitutes a representation to the USPTO that the attorney is authorized to represent the applicant. Accordingly, the Examiner indicates that the terminal disclaimer was disapproved by the USPTO.

Therefore, it is respectfully submitted that the attorney signature on the terminal disclaimer is appropriate, and that the terminal disclaimer should be accepted by the USPTO.

If the USPTO continues to disapprove of the terminal disclaimer, it is respectfully requested that the Examiner point out a section of 35 USC, 37 CFR or the MPEP specifically indicating that the signature of an attorney on the terminal disclaimer is not sufficient to be accepted by the USPTO.

In view of the above, it is respectfully submitted that the rejection is overcome.

VII. CONCLUSION

In view of the above, it is respectfully submitted that the application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Date:

April 11, 2005

Respectfully submitted,

By:

Paul I. Kravetz
Paul I. Kravetz
Registration No. 35,230